B.C.D. 04-21

EMPLOYER STATUS DETERMINATION
Escalante Western Railway

APR 0 8 2004

This is the determination of the Railroad Retirement Board concerning the status of Escalante Western Railway (EWR) as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) (RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.) (RUIA).

In 1973, Western Fuels Association, Inc. (WFAI) became part of the "coal chain" that utilizes America's vast coal reserves and brings them to the consumer market. According to a press release, Western Fuels Association, Inc. is a not-for-profit and consumer-driven business that produces coal. WFAI contracts coal transportation services with Burlington Northern Santa Fe and Union Pacific, both covered employers under the Acts. At issue before the Board is WFAI's operation of Escalante Western Railway, which connects another producer's coal mine in New Mexico to one of its nearby power plants.

Information regarding EWR was provided by Rod Wolf, Director of Rail Operations for WFAI. According to Mr. Wolf, EWR is owned by WFAI and began operations in 1984. He also stated that EWR employs four employees. Mr. Robert P. Norrgard is the chief executive officer of EWR. Mr. Wolf stated that the EWR provides rail service from the Escalante Generating Station, approximately 4.0 miles on the Palmer Spur and then 37 miles on the Lee Ranch Coal Spur to the Lee Ranch Mine; however, EWR is a private carrier and does not interchange with any rail carriers covered under the RRA.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)), insofar as relevant here, defines a covered employer as:

> (i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of title 49, United States Code;

Section 1 of the RUIA contains essentially the same definition, as does section 3231 of the Railroad Retirement Tax Act.

The information summarized above indicates that Escalante Western Railway does not operate, and never has operated, as a rail common carrier. Rather, Western Fuels Association, Inc. established EWR for the sole purpose of transporting coal to one of its power plants. Further, there is no evidence that EWR provides any service in connection with the interstate transportation of freight or passengers by rail within the meaning of the RRA and RUIA.

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Accordingly, it is the determination of the Board that Escalante Western Railway is not an employer under the RRA and the RUIA.

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